Office - Supreme Court, U.S.
FILED
DEC 8 1982
ALEXANDER L. STEVAS,
CLERK

No. 82-820

In the Supreme Court of the United States

OCTOBER TERM, 1982

BRIGHAM YOUNG UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

LAWRENCE G. WALLACE
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

In the Supreme Court of the United States

OCTOBER TERM, 1982

No. 82-820

BRIGHAM YOUNG UNIVERSITY, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

Petitioner seeks review of the decision below enforcing an Internal Revenue summons requiring it to produce the names and addresses of all those from whom it had received donations of property in kind (other than securities) during the years 1976 through 1978. Subsequent to the filing of the petition, petitioner fully complied with the summons. The case is therefore moot.

The pertinent facts showing that the case is moot are as follows: On November 5, 1979, the government filed a petition in the United States District Court for the District of Utah, pursuant to Section 7609(g) and (h) of the Internal Revenue Code of 1954 (26 U.S.C.), seeking leave to serve a John Doe summons on petitioner requiring it to produce the names and addresses of all those who contributed to it property in kind (other than securities) during the years

1976 through 1978. The district court granted leave to serve the summons on November 14, 1979. Upon petitioner's refusal to comply with the summons, the government instituted enforcement proceedings on December 21, 1979 (Pet. App. 1a). The district court refused to enforce the summons (Pet. App. 1a-7a), but the court of appeals reversed and ordered enforcement (Pet. App. 8a-16a). The court of appeals issued its mandate on September 6, 1982, and denied petitioner's motion to recall the mandate on November 12, 1982. On November 17, 1982, Justice White denied petitioner's motion for a further stay. We are advised by the Internal Revenue Service that on November 19, 1982, petitioner fully complied with the summons.

Enforcement of the terms of the summons was the only relief sought by the government in this action. The various defenses raised by petitioner in both the district court and the court of appeals were aimed at preventing that enforcement. Since petitioner has now complied with the summons by producing the names and addresses of the donors of property during the years 1976 through 1978, there is no longer a live controversy between the parties. The case is therefore moot. *United States* v. *Kis*, 658 F. 2d 526, 532-533 (7th Cir. 1981), cert. denied, No. 81-1272 (Mar. 22, 1982); *United States* v. *Patmon*, 630 F. 2d 458 (6th Cir. 1980); *United States* v. *Arthur Andersen & Co.*, 623 F. 2d 720 (1st Cir. 1980); *United States* v. *Deak-Perera International Banking Corp.*, 610 F. 2d 89 (2d Cir. 1979); *United States* v. *Hankins*, 565 F. 2d 1344 (5th Cir. 1978), cert. denied, 440 U.S. 909 (1979).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.[1]

LAWRENCE G. WALLACE
*Acting Solicitor General**

DECEMBER 1982

---

[1]This is the appropriate disposition, rather than granting the petition and vacating the judgment below, because the case was not moot when that judgment was entered and the petition presents no question that would have warranted this Court's review in the absence of mootness.

*The Solicitor General is disqualified in this case.

DOJ-1982-12